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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/088,778 | 07/02/2002 | Peter A. Crouch | ARD106USA | 9526 |
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| JOEL D. SKINNER, JR. SKINNER AND ASSOCIATES 212 COMMERCIAL ST. HUDSON, WI 54016 | | | EXAMINER FOREMAN, JONATHAN M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3736 | |

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/088,778

Applicant(s)

CROUCH ET AL.

Examiner

Jonathan ML Foreman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE ____ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7,9-11 and 13-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,9-11 and 13-15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 November 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/19/04 has been entered.

Drawings

2. The drawings were received on 11/19/04. These drawings are acceptable.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

((e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1 – 4, 7, 9, 10 and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,601,242 to Rebischke.

In reference to claims 1 – 4, 7, 9 and 13, Rebischke discloses applicant's claimed invention (Figure 3) including a flexible liner (16), a housing (20, 22) having a closable lid (30), the lid (30) being securable to the housing to close the housing (Col. 4, lines 11 - 17), the housing and the lid together defining a closed volume when the lid is secured to the housing (Col. 3, line 66 – Col. 4, line 1), at least part of the housing having a strainer member (Col. 3, lines 45 - 47) having a plurality of openings adapted to allow water entering the housing to escape through the strainer member, but

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to collect, and retain particulate matter carried by the water (Col. 3, lines 50 – 52), so that upon securing the lid in position, particulate matter is capable of being trapped within the closed volume. The openings are sufficiently small to ensure that human cells (hair) are retained (Col. 1, lines 25 – 29). Rebischke discloses the openings being a uniform size or a non-uniform size (Col. 3, lines 47 – 50). The housing is of dimensions to allow it to be received within and seal the outlet of a bath, shower or wash basin (Col. 1, lines 25 - 26). The lid (30) is securable on the housing by screw threads (34).

In reference to claim 10, Rebischke discloses locating an evidence collection device within the outlet of a bath, shower or wash basin (Col. 1, lines 25 - 26). Rebischke discloses while in use allowing water to escape from the bath, shower or basin, the water entering the housing and passing through the strainer member (Col. 3, lines 50 – 52), particulate matter carried into the housing being unable to pass through the strainer member and being retained within the housing (Col. 1, lines 27 – 29; Col. 3, lines 50 - 55). Closing the lid (30) on the device would trap the collected matter within the housing. Rebischke discloses removing the device from the outlet (Col. 2, lines 25 – 27).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,601,242 to Rebischke as applied to claims 4 above, and further in view of U.S. Patent No. 4,232,407 to Williams.

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In regards to claim 5, Rebischke discloses a plurality of openings of a non-uniform size (Col. 3, lines 47 – 48), but fails to disclose the openings in the central part are smaller than those located toward the edges. Williams discloses a strainer for positioning within an outlet of a washbasin (Col. 1, lines 5 – 7) having openings of a non-uniform size. The openings in the central part are shown (Figure 1) to be smaller than those located toward the edges (15). It would have been obvious to one having ordinary skill in the art, to modify the openings as disclosed by Rebischke to be a non-uniform size with the larger openings being toward the edges as taught by Williams in order to retain solid materials of desired sizes (Col. 2, lines 42 – 45). The functional statement set forth in a “whereby” clause does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim. *In re Mason*, 244, F.2d 733, 114 USPQ 127 (CCPA 1957).

7. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,601,242 to Rebischke as applied to claim 10 above, and further in view of DE 4434544 C1 to Hartmann et al.

In reference to claim 11, Rebischke discloses collecting evidence in a bath, shower or wash basin, but fails to disclose wiping the bath, shower or wash basin using a cloth or wipe to collect matter adhering thereto. Hartmann et al. discloses a wipe (2) for collecting evidence from a victim or a perpetrator by wiping. It would have been obvious to one having ordinary skill in the art at the time the invention was made to wipe the bath, shower or basin having the collecting device as disclosed by Rebischke, when used by a victim or perpetrator, in order to gather and protect any comparative material, as taught by Hartmann et al., remaining in the shower, bath or wash basin.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,601,242 to Rebischke in view of U.S. Patent No. 4,232,407 to Williams.

In reference to claim 14, Rebischke discloses applicant's claimed invention (Figure 3) including a generally cylindrical, tubular housing having an open upper end (26), an open bottom end (22) and a predetermined central volume, a closable lid (30), the lid (30) being securable to the upper end of the housing to close the housing (Col. 4, lines 11 - 17), the housing and the lid together defining a closed volume when the lid is secured to the housing (Col. 3, line 66 - Col. 4, line 1) via screw threading (34), a strainer member connected to the bottom end of the housing (Col. 3, lines 45 - 47) having a plurality of openings adapted to allow water entering the housing to escape through the strainer member, but to collect, and retain particulate matter carried by the water (Col. 3, lines 50 - 52), so that upon securing the lid in position, particulate matter is capable of being trapped within the closed volume. The openings are sufficiently small to ensure that human cells (hair) are retained (Col. 1, lines 25 - 29; Col. 3, lines 53 - 55). The housing is of dimensions to allow it to be received within and seal the outlet of a bath, shower or wash basin (Col. 1, lines 25 - 26). Rebischke discloses the openings being of a non-uniform size (Col. 3, lines 47 - 50). but fails to disclose the openings in the central part are smaller than those located toward the edges. Williams discloses a strainer for positioning within an outlet of a washbasin (Col. 1, lines 5 - 7) having openings of a non-uniform size. The openings in the central part are shown (Figure 1) to be smaller than those located toward the edges (15). It would have been obvious to one having ordinary skill in the art, to modify the openings as disclosed by Rebischke to be a non-uniform size with the larger openings being toward the edges as taught by Williams in order to retain solid materials of desired sizes (Col. 2, lines 42 - 45). It is well established that a recitation with respect to the manner in which an apparatus is intended to be employed, i.e., a functional limitation, does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claim.. *In re Pearson*, 494 F.2d 1399, 181 USPQ 641 (CCPA 1974); *In re Casey*,

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370 F.2d 576, 152 USPQ 235 (CCPA 1967); *In re Otto*, 312 F.2d 937, 136 USPQ 458 (CCPA 1963). Where the prior art reference is inherently capable of performing the function described in a functional limitation, such functional limitation does not define the claimed apparatus over such prior art reference, regardless of whether the prior art reference explicitly discusses such capacity for performing the recited function. *In re Ludtke*, 441 F.2d 660, 169 USPQ 563 (CCPA 1971). In addition, where there is reason to believe that such functional limitation may be an inherent characteristic of the prior art reference, Applicant is required to prove that the subject matter shown in the prior art reference does not possess the characteristic relied upon. *In re Spada*, 911 F.2d 705, 15 USPQ2d 1655 (Fed. Cir. 1990); *In re King*, 801 F.2d 1324, 1327, 231 USPQ 136, 138 (Fed. Cir. 1986); *In re Ludtke*, 441 F.2d 664, 169 USPQ 566 (CCPA 1971).

9. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,601,242 to Rebischke in view of The Opinion of the Nebraska Court of Appeals; *State v. Greer*.

In regards to claim 15, Rebischke discloses providing an evidence collection device including a generally cylindrical, tubular housing having an open upper end (26), an open bottom end (22) and a predetermined central volume, a closable lid (30), the lid (30) being securable to the upper end of the housing to close the housing (Col. 4, lines 11 - 17), the housing and the lid together defining a closed volume when the lid is secured to the housing (Col. 3, line 66 – Col. 4, line 1), a strainer member connected to the bottom end of the housing (Col. 3, lines 45 - 47) and defining a bottom end of the volume, having a plurality of openings sufficiently small to ensure that human cells (hair) are retained (Col. 1, lines 25 – 29; Col. 3, lines 53 - 55), locating the device, with the lid in a closed position, within the outlet of a bath, shower or basin (Col. 4, lines 1 – 6), allowing an individual to bath, shower or wash in the bath, shower or basin (Col. 1, lines 24 – 30), opening the lid (Figure 1),

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allowing water to pass through the strainer member, particulate matter carried into the housing being unable to pass through the strainer member (Col. 2, lines 13 – 17), securing the lid to the housing (Col. 4, lines 3 – 5), and removing the device from the outlet (Col. 2, lines 25 – 27).

Rebischke discloses matter accumulating in the closed volume (Col. 1, lines 27 – 29; Col. 2, lines 13 – 17) but fails to disclose analyzing the collected matter contained in the volume for evidence.

However, The Opinion of the Nebraska Court of Appeals; State v. Greer teaches analyzing matter collected in a drain trap for evidence (Page 10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to obtain the collected matter contained within the volume as disclosed by Rebischke and analyze the matter for evidence as taught by The Opinion of the Nebraska Court of Appeals; State v. Greer in the event that the location of the device is at a crime scene or at a location where the retrieval of evidence is desired.

Response to Arguments

10. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent No. 171,002 to Donovan.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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